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NOTES.

ANTI-TRUST LAW AS APPLIED TO LABOR CASES.

The recent case of *Loewe* v. *Lawlor* (208 U. S. 274) on its facts presented a boycott of the plaintiff, a hat manufacturer, by the defendants, members of a vast combination, called the United Hatters of America. This organization is a part of the American Federation of Labor, and the boycott was effected by threatening plaintiff's customers throughout the States with loss of patronage if they continued to deal with the plaintiff. The case was held to be within the Sherman Anti-Trust Act [1] and the defendants were required to pay triple damages under Section 7 of that Act.

The broad principle upon which the case rests is that the Act

[1] Act of July 2, 1890.

applies to combinations of labor as well as capital. This conclusion is based upon the generality of the language of the Act, in that it embraces "*every* contract in restraint of trade;" upon the fact that during the pendency of the bill in Congress futile efforts were made to exempt labor organizations from its operation; and that in at least one case the point had been decided.[2] It is manifest that in holding that the Act applied to combinations of labor as well as capital, a principle was laid down which was much broader than were the facts of the case. The emphasis is laid upon the combination and not upon the *means* employed to effectuate this combination. Thus, although the means here resorted to was a boycott, yet the decision does not seem to have been rested upon this ground. It is submitted, therefore, that the doctrine of our case, that a combination of labor in restraint of interstate commerce is unlawful, substantially affects the common law rules in trade and labor cases. A consideration of the scope of this doctrine will make this apparent.

In our analysis of this doctrine we find these three elements, all of which must exist in order that the doctrine may apply: (1) the combination; (2) the restraint; (3) the interstate commerce; we shall take these up in their order. The combination may be of individuals or groups of individuals, and may take the form of a contract, an unincorporated association, or a corporation.[3] The "restraint" to be within the Act need not be an unreasonable one.[4] On the principle that the fixing of the price of goods embarked in interstate commerce by the members of an association *inter se*, is unlawful,[5] it would seem that the fixing of the price of labor employed in interstate commerce is also unlawful. Therefore, it would seem that a strike in pursuance of such a combination would be within the Act; and that this would probably also be true in case of a "sympathetic" strike. Lastly, the restraint must be of interstate in contradistinction to intrastate commerce. Thus, under the principle that the restraint which the Act declares unlawful is

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[2] *U. S.* v. *Workingmen's Amalgamated Council*, 54 Fed. 994; see also *In re* Dels. 64 Fed. 724.

[3] *Addystone Pipe & Steel Co.* v. *U. S.*, 175 U. S. 211; *Northern Securities Case*, 193 U. S. 197.

[4] *Northern Securities Case* (*supra*).

[5] *Montague* v. *Lowry*, 193 U. S. 38; *Swift & Co.* v. *U. S.*, 196 U. S. 395; *Addystone Pipe & Steel Co.* v. *U. S.* (*supra*).

a restraint upon the transportation and sale, and not upon the manufacture of goods,[6] it would seem to follow that a combination, having for its purpose the fixing of the price of labor in the manufacture of goods within a State, would not be unlawful; and the same result would probably be reached even where the defendant had manufactories in several States. Of course, if, as in the present case, that purpose were effectuated by a means which was a restraint upon the sale of the goods, the combination would thereby become unlawful.

In view of the decision of the principal case, it is not surprising that a number of bills are pending in Congress intended to affect the doctrine of the case—some seeking to annul the decision, and some merely to modify it. It is in the latter category that the proposed Hepburn Amendment to the Anti-Trust Act is to be placed. It provides that "nothing in the said Act * * * is intended * * * to interfere with the right of employees to strike for any cause or combine with each other or with employers for the purpose of peacefully obtaining from employers satisfactory terms for their labor or satisfactory conditions of employment."

The Effect of the Negotiable Instruments Act on the Liability of a Surety.

The first decisions under a uniform code are always to be watched with interest, upon whatever point they may arise, for the tendency of the Courts to follow them will be very strong. Particularly significant are they when bearing upon a fundamental principle of common law. Hence the profession has read with much thought the opinions of the Supreme Courts of Maryland and Oregon, delivered in the cases of *Vanderford* v. *Farmers' and Mechanics' National Bank of Westminster,* and *Cellers* v. *Lyons,* respectively, and collected in 10 L. R. A. (N. S.) 129 and 133. The question arising in these two cases, which, for purposes of interpreting the Negotiable Instruments Act was the same, related to the effect of a binding agreement between the payee of a promissory note and one of two joint and several makers, to extend the time of payment, without

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[6] *U. S.* v. *E. C. Knight Co.,* 156 U. S. 1.

[7] Thus, in *In re* Dels, 64 Fed. 724, a combination originally lawful because not affecting interstate commerce was held unlawful because it later did so.